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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 01 2020

BY Alma Vallejo Garcia
ALMA VALLEJO GARCIA, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

BENJAMIN CASTANEDA-RIVERA, as
an individual and on behalf of all others
similarly situated,

Plaintiffs,

vs.

MCLANE/SUNEAST, INC., a Texas
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. **CIV DS 2017663**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR CODE § 226(a);
- (2) VIOLATION OF CAL. LABOR CODE §§ 2698, *ET SEQ.*;

DEMAND OVER \$25,000.00

1 Plaintiff Benjamin Castaneda-Rivera (“Plaintiff”) hereby submits this Class and
2 Representative Action Complaint (“Complaint”) against Defendant McLane/Suncoast, Inc.
3 (“Defendant”) and Does 1 through 50 (hereinafter collectively referred to as “Defendants”), on
4 behalf of himself and a class of all other similarly situated current and former employees of
5 Defendants for civil and statutory penalties under the California Labor Code as follows:

6 **INTRODUCTION**

7 1. This class and representative action is within the Court’s jurisdiction under
8 California Labor Code sections 226 and 2698 *et seq.*

9 2. This Complaint challenges systemic illegal employment practices resulting in
10 violations of the California Labor Code against individuals who worked for Defendants.

11 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
12 jointly and severally, have acted intentionally and with deliberate indifference and conscious
13 disregard to the rights of all employees in Defendants’ failure to provide accurate itemized wage
14 statements to Plaintiff and Class Members.

15 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 have engaged in, among other things a system of willful violations of the California Labor Code
17 by creating and maintaining policies, practices and customs that knowingly deny employees the
18 above stated rights and benefits.

19 **JURISDICTION AND VENUE**

20 5. This Court has jurisdiction over the violations of California Labor Code sections
21 226 and 2698 *et seq.*

22 6. Venue is proper in San Bernardino County because Defendant provides services
23 in San Bernardino County, and Plaintiff is currently employed by Defendant in San Bernardino
24 County.

25 **PARTIES**

26 7. Plaintiff began working for Defendant in or about May 2015 as an overnight
27 stocker. Throughout his employment with Defendant, Plaintiff has been a non-exempt, hourly
28 employee.

1 8. Plaintiff was and is the victim of the policies, practices, and customs of Defendant
2 complained of in this action in ways that have deprived him of the rights guaranteed by
3 California Labor Code sections 226 and 2698 *et seq.*

4 9. Plaintiff is informed and believes, and based thereon alleges, that
5 McLane/Suneast, Inc. is a Texas corporation that operates throughout California, including in
6 San Bernardino County.

7 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
8 herein mentioned Defendants are and were business entities, individuals, and partnerships,
9 licensed to do business and actually doing business in the State of California. As such, and based
10 upon all the facts and circumstances incident to Defendants' business, Defendants are subject to
11 the California Labor Code.

12 11. Plaintiff does not know the true names or capacities, whether individual, partner
13 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
14 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
15 complaint when the true names and capacities are known. Plaintiff is informed and believes and
16 based thereon alleges that each of said fictitious defendants was responsible in some way for the
17 matters alleged herein and proximately caused Plaintiff and members of the general public and
18 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

19 12. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
21 Defendants, and each of them, were the agents, servants and employees of each of the other
22 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
23 acting within the course and scope of said agency and employment.

24 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
25 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
26 joint venturer of, or working in concert with each of the other co-Defendants and was acting
27 within the course and scope of such agency, employment, joint venture, or concerted activity. To
28 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the

1 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
2 Defendants.

3 14. At all times herein mentioned, Defendants, and each of them, were members of,
4 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
5 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

6 15. At all times herein mentioned, the acts and omissions of various Defendants, and
7 each of them, concurred and contributed to the various acts and omissions of each and all of the
8 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
9 herein mentioned, Defendants, and each of them, ratified each and every act or omission
10 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
11 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
12 damages as herein alleged.

13 CLASS ACTION ALLEGATIONS

14 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
15 California Code of Civil Procedure section 382. Plaintiff proposes the following class: all current
16 and former non-exempt employees of Defendant in the State of California who were paid
17 overtime wages at any time between April 6, 2019, through the present (the "Class").

18 17. **Numerosity:** The members of the Class are so numerous that joinder of all
19 members would be impractical, if not impossible. The identity of the members of the Class is
20 readily ascertainable by review of Defendant's records, including payroll records. Plaintiff is
21 informed and believes, and based thereon alleges, that Defendant failed to provide accurate
22 itemized wage statements to employees in violation of Labor Code section 226.

23 18. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
24 necessary steps to represent fairly and adequately the interests of the Class defined above.
25 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
26 Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past
27 and currently have a number of wage-and-hour class actions pending in California state and
28 federal courts.

1 19. Defendant uniformly administered a corporate policy, practice of failing to
2 provide accurate itemized wage statements to Plaintiff and the Class in violation of Labor Code
3 section 226.

4 20. **Common Question of Law and Fact:** There are predominant common questions
5 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
6 concerning Defendant's policy and practice of failing to provide proper wage statements to
7 Plaintiff and the Class in violation of Labor Code section 226.

8 21. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
9 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
10 as the Class Members. As with other California non-exempt employees, Plaintiff was not
11 provided proper and accurate itemized wage statements, in violation of Labor Code section
12 226(a). Specifically, whenever overtime wages were paid, the corresponding wage statements
13 did not identify the correct rates of pay. Instead, the wage statements showed overtime wages on
14 two separate line items, with each line item showing the base rate of pay, instead of one and one-
15 half times the regular rate of pay. Plaintiff alleges that Defendant intentionally provided wage
16 statements that displayed the incorrect overtime rate, and that Defendant did not have any good
17 faith belief, in law or fact, as to its actions. Such inaccuracy caused injury to Plaintiff and
18 putative class members, as it precluded Plaintiff and putative class members from being able to
19 accurately calculate their wages. Accordingly, Plaintiff is a victim of Defendant's violation of
20 California Labor Code section 226.

21 22. The California Labor Code section upon which Plaintiff bases these claims is
22 broadly remedial in nature. These laws and labor standards serve an important public interest in
23 establishing minimum working conditions and standards in California. These laws and labor
24 standards protect the average working employee from exploitation by employers who may seek
25 to take advantage of superior economic and bargaining power in setting onerous terms and
26 conditions of employment.

27 23. The nature of this action and the format of laws available to Plaintiff and
28 members of the Class identified herein make the class action format a particularly efficient and

appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Requiring each Class Member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

24. The prosecution of separate actions by the individual Class Members, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual Class Members against Defendants and which would establish potentially incompatible standards of conduct for Defendants, and/or (b) adjudications with respect to individual Class Members which would, as a practical matter, be dispositive of the interest of the other Class Members not parties to the adjudications or which would substantially impair or impede the ability of the Class Members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

25. Such a pattern, practice and uniform administration of corporate policy regarding illegal payroll practices described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action, for applicable penalties, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code section 226 and Code of Civil Procedure section 1021.5.

26. Proof of a common business practice or factual pattern, which the named Plaintiff experienced and is representative of, will establish the right of each of the members of the Plaintiff Class to recovery on the causes of action alleged herein.

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1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 226**

3 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

4 27. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
5 though fully set forth herein.

6 28. Defendant failed in its affirmative obligation to provide accurate itemized wage
7 statements. Defendant, as a matter of policy and practice, did not provide accurate records in
8 violation of Labor Code section 226(a).

9 29. Plaintiff and Class Members were paid on an hourly basis. As such, the wage
10 statements provided to them should have reflected all applicable hourly rates in effect during the
11 pay period. The wage statements provided to Plaintiff and the Class failed to accurately identify
12 such information. More specifically, whenever overtime wages were paid to Class Members, the
13 corresponding wage statement showed overtime wages on two separate line items, with each line
14 item showing the base rate of pay instead of one and one-half times the regular rate of pay.

15 30. Such a pattern, practice and uniform administration of corporate policy as
16 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
17 identified herein in a civil action, for all penalties pursuant to Labor Code section 226, including
18 interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor
19 Code section 226.

20 **SECOND CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

22 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
23 **AGAINST ALL DEFENDANTS)**

24 31. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
25 though fully set forth herein.

26 32. Plaintiff brings this cause of action as a proxy for the State of California and in
27 this capacity, seeks penalties on behalf of all Aggrieved Employees from April 6, 2019, through
28 the present, for Defendant's policy and practice of failing to provide proper wage statements in

violation of Labor Code section 226(a).

33. On or about August 21, 2020, Plaintiff sent written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code section 226(a), pursuant to Labor Code section 2698, *et seq.*, the Private Attorneys General Act ("PAGA"). To date, the LWDA has not responded to Plaintiff's written notice.

34. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendant's violation of Labor Code section 226(a) for the time period described above, on behalf of himself and other Aggrieved Employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action, for penalties pursuant to California Labor Code section 226, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for civil penalties according to proof pursuant to Labor Code section 2698, *et seq.*, and for costs and attorneys' fees;
6. On all causes of action for attorneys' fees and costs as provided by California Labor Code sections 226 and 2699, and Code of Civil Procedure section 1021.5; and
7. For such other and further relief the Court may deem just and proper.

DATED: August 31, 2020

DIVERSITY LAW GROUP, P.C.

By: _____

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Attorneys for Plaintiff and the Class